

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BARNES, ET AL.,
Plaintiffs,

No. 1:10-cv-541

-v-

HONORABLE PAUL L. MALONEY

BIRDS EYE FOODS LLC
AND BIRDS EYE FOODS, INC.,
Defendants.

ORDER

Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) on June 14, 2010. (Dkt. No. 10.) On June 30, 2010, Plaintiffs filed an amended complaint. (Dkt. No. 13.) Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure allows a party 21 days to file an amended pleading once, as a matter of course, after service of a motion under Rule 12(b). When filed, an amended complaint supercedes the original complaint, which becomes a nullity. *See Drake v. City of Detroit*, 266 F.App'x 444, 448 (6th Cir. 2008); *Klyce v. Ramirez*, No. 87-5176, 1988 WL 74155, at * 3 (6th Cir. July 19, 1998) (per curiam) (unpublished table opinion) (collecting cases from other circuits). An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot. *See Bancoult v. McNamara*, 214 F.R.D. 5, 13 (D.D.C. 2003) ("Because the original complaint now is superceded by the amended complaint, the court denies without prejudice all pending motions pertaining to the original complaint.").

Accordingly, because Plaintiffs filed an amended complaint, Defendants' motion to dismiss (Dkt. No. 10) is **DISMISSED AS MOOT. IT IS SO ORDERED.**

Date: July 12, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge